

Senate Bill No. 780

CHAPTER 899

An act to add Title 11.7 (commencing with Section 423) of Part 1 of, and to add and repeal Title 5.7 (commencing with Section 13775) to Part 4 of, the Penal Code, relating to the protection of constitutional rights.

[Approved by Governor October 14, 2001. Filed
with Secretary of State October 14, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 780, Ortiz. Protection of the exercise of constitutional rights.

Existing provisions of federal law make it a crime and provide a civil remedy for the commission of certain activities that interfere with a person's access to reproductive health services facilities or with a person's participation in religious services or that damage or destroy property of a reproductive health facility or place of worship.

Existing provisions of state law authorize a civil action for damages resulting from the commission of specified activities that interfere with a person's access to a health facility or with the facility's functioning, and a court in which a proceeding for this relief is filed, is required to take all reasonable action to protect, as specified, the parties and witnesses in the matter.

Under other existing provisions of state law, it is a crime to make a threat, as specified, causing a person to refrain from engaging in a religious service or to commit an act of terrorism, as specified, at a place of religious worship or at a location where abortion counseling services, education, or other specified activities are conducted. Existing law also makes it a crime to damage or destroy the real or personal property of a place of worship or to interfere with the exercise of a person's religious beliefs because of his or her religion.

Under existing law, the Attorney General is required to collect from local law enforcement agencies information relating to crimes motivated by, among other personal characteristics, a person's religion, which the Department of Justice analyzes and submits in an annual report to the Legislature.

This bill would add similar provisions in state law to make it a crime and would provide a civil remedy for the commission of the acts prohibited under federal law, as described above. The bill would require a court in proceedings regarding the prohibited acts to take all actions reasonably required to protect the safety and privacy of the parties, witnesses, and persons who are victims, or at risk of becoming victims,

of the prohibited activities. This bill would allow specified persons to use pseudonyms in civil actions related to prohibited acts. The bill would authorize as remedies in the civil action injunctive relief, compensatory and punitive damages, attorney's fees, costs of the suit, and statutory damages. This bill would also authorize the Attorney General, a district attorney, or a city attorney to file an action to enjoin prohibited acts, for compensatory damages to persons aggrieved by prohibited acts, and for civil penalties, as specified.

The bill would also require the Attorney General to assume specified duties related to planning, information gathering, and analysis with respect to anti-reproductive-rights crimes, as defined. The bill would also require the Attorney General to submit various reports on this issue to the Legislature. The bill would require the Commission on Peace Officer Standards and Training to develop a training course on anti-reproductive-rights crimes. This bill would provide that the requirements for information gathering, reporting, planning, and course development related to anti-reproductive-rights crimes would be repealed on January 1, 2007.

Because this bill would create a new crime and would impose a reporting requirement on local law enforcement agencies, it would impose a state-mandated program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds the following:

(a) Federal law enforcement activities proved effective between 1993 and 2001, in reducing and punishing crimes intended to violate a woman's right to reproductive choice. However, the level and threat of those crimes in 2001 remained unacceptably high, and continued and increased law enforcement remained necessary.



(b) Federal actions that proved effective in reducing and punishing these crimes include the vigorous criminal and civil enforcement of the Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248) by the United States Department of Justice and the United States Attorney's Office; the creation by the United States Department of Justice of the national Task Force on Violence Against Health Care Providers that gathers and analyzes information, which is made available to law enforcement agencies and prosecutors, on threats against reproductive health service providers and those persons suspected of engaging in this activity; the creation by the United States Attorney's Office of regional task forces on violence against abortion providers that coordinate federal, state, and local law enforcement efforts in connection with preventing this activity; the provision of instruction by the United States Marshals Service to ensure reproductive health services providers are able to promptly communicate threats they receive to the appropriate federal, state, and local law enforcement officials; other security training and advice provided by the United States Marshals Services and the Bureau of Alcohol, Tobacco and Firearms to reproductive health service providers; the protection provided by the United States Marshals Service, the Bureau of Alcohol, Tobacco, and Firearms, and the Federal Bureau of Investigation to those persons most at risk from anti-reproductive-rights crime; the training of law enforcement officers and reproductive health services providers in regional sessions sponsored by the United States Attorney's Offices in cooperation with the Feminist Majority Foundation, the National Abortion Federation, and the Planned Parenthood Federation of America, and certified by the Commission on Peace Officer Standards and Training; and the instruction provided by the United States Department of Justice and Federal Bureau of Investigation personnel in those training sessions.

(c) It is the intent of the Legislature that state and local law enforcement agencies continue and build on these services in California.

(d) (1) It is the intent of the Legislature that the Commission on Peace Officer Standards and Training, pursuant to Section 13778 of the Penal Code and in cooperation with the Department of Justice and other subject matter experts, provide for regular, periodic, continuing professional training of peace officers throughout California, and that this training take place in conjunction, when appropriate, with training of reproductive health service providers funded by noncommission sources.

(2) It is the intent of the Legislature that training pursuant to Section 13778 of the Penal Code include information on crimes, including antigovernment extremist crimes and certain hate crimes motivated by



hostility to real or perceived ethnic background or sexual orientation, commonly committed by some of the same persons who commonly commit anti-reproductive-rights crimes of violence. Likewise, it is the intent of the Legislature that the guidelines and course of instruction and training pursuant to Section 13519.6 of the Penal Code include information on these crimes.

(e) Nothing in this act is intended to define anti-reproductive-rights crimes or antigovernment extremist crimes as hate crimes, or otherwise to expand or change the definition of hate crimes.

(f) It is the intent of the Legislature that nothing in this act, and no action by anyone pursuant to this act, stigmatize anyone solely because of his or her political or religious beliefs, because of his or her advocacy of any lawful actions, or because of his or her exercise of the rights of free speech or freedom of religion, and that nothing in this act, and no actions by anyone pursuant to this act, otherwise harm anyone because of his or her beliefs, constitutionally protected speech, or lawful actions.

SEC. 2. Title 11.7 (commencing with Section 423) is added to Part 1 of the Penal Code, to read:

**TITLE 11.7. CALIFORNIA FREEDOM OF ACCESS TO CLINIC
AND CHURCH ENTRANCES ACT**

423. This title shall be known and may be cited as the California Freedom of Access to Clinic and Church Entrances Act, or the California FACE Act.

423.1. The following definitions apply for the purposes of this title:

(a) “Crime of violence” means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

(b) “Interfere with” means to restrict a person’s freedom of movement.

(c) “Intimidate” means to place a person in reasonable apprehension of bodily harm to herself or himself or to another.

(d) “Nonviolent” means conduct that would not constitute a crime of violence.

(e) “Physical obstruction” means rendering ingress to or egress from a reproductive health services facility or to or from a place of religious worship impassable to another person, or rendering passage to or from a reproductive health services facility or a place of religious worship unreasonably difficult or hazardous to another person.

(f) “Reproductive health services” means reproductive health services provided in a hospital, clinic, physician’s office, or other facility and includes medical, surgical, counseling, or referral services relating



to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

(g) “Reproductive health services client, provider, or assistant” means a person or entity that is or was involved in obtaining, seeking to obtain, providing, seeking to provide, or assisting or seeking to assist another person, at that other person’s request, to obtain or provide any services in a reproductive health services facility, or a person or entity that is or was involved in owning or operating or seeking to own or operate, a reproductive health services facility.

(h) “Reproductive health services facility” includes a hospital, clinic, physician’s office, or other facility that provides or seeks to provide reproductive health services and includes the building or structure in which the facility is located.

423.2. Every person who, except a parent or guardian acting towards his or her minor child or ward, commits any of the following acts shall be subject to the punishment specified in Section 423.3.

(a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant.

(b) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

(c) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant.

(d) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

(e) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility.



(f) Intentionally damages or destroys the property of a place of religious worship.

423.3. (a) A first violation of subdivision (c) or (d) of Section 423.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars (\$2,000).

(b) A second or subsequent violation of subdivision (c) or (d) of Section 423.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars (\$5,000).

(c) A first violation of subdivision (a), (b), (e), or (f) of Section 423.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars (\$25,000).

(d) A second or subsequent violation of subdivision (a), (b), (e), or (f) of Section 423.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars (\$50,000).

(e) In imposing fines pursuant to this section, the court shall consider applicable factors in aggravation and mitigation set out in Rules 4.421 and 4.423 of the California Rules of Court, and shall consider a prior violation of the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), or a prior violation of a statute of another jurisdiction that would constitute a violation of Section 423.2 or of the federal Freedom of Access to Clinic Entrances Act of 1994, to be a prior violation of Section 423.2.

(f) This title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which provides for more severe misdemeanor penalties for first violations and felony-misdemeanor penalties for second and subsequent violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate.

(g) No person shall be convicted under this article for conduct in violation of Section 423.2 that was done on a particular occasion where the identical conduct on that occasion was the basis for a conviction of that person under the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248).

423.4. (a) A person aggrieved by a violation of Section 423.2 may bring a civil action to enjoin the violation, for compensatory and punitive damages, and for the costs of suit and reasonable fees for attorneys and expert witnesses, except that only a reproductive health



services client, provider, or assistant may bring an action under subdivision (a), (c), or (e) of Section 423.2, and only a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom in a place of religious worship, or the entity that owns or operates a place of religious worship, may bring an action under subdivision (b), (d), or (f) of Section 423.2. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of a final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of one thousand dollars (\$1,000) per exclusively nonviolent violation, and five thousand dollars (\$5,000) per any other violation, for each violation committed.

(b) The Attorney General, a district attorney, or a city attorney may bring a civil action to enjoin a violation of Section 423.2, for compensatory damages to persons aggrieved as described in subdivision (a) and for the assessment of a civil penalty against each respondent. The civil penalty shall not exceed two thousand dollars (\$2,000) for an exclusively nonviolent first violation, and fifteen thousand dollars (\$15,000) for any other first violation, and shall not exceed five thousand dollars (\$5,000) for an exclusively nonviolent subsequent violation, and twenty-five thousand dollars (\$25,000) for any other subsequent violation. In imposing civil penalties pursuant to this subdivision, the court shall consider a prior violation of the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), or a prior violation of a statute of another jurisdiction that would constitute a violation of Section 423.2 or the federal Freedom of Access to Clinic Entrances Act of 1994, to be a prior violation of Section 423.2.

(c) No person shall be found liable under this section for conduct in violation of Section 423.2 done on a particular occasion where the identical conduct on that occasion was the basis for a finding of liability by that person under the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248).

423.5. (a) (1) The court in which a criminal or civil proceeding is filed for a violation of subdivision (a), (c), or (e) of Section 423.2 shall take all action reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of either of the following:

(A) A reproductive health services client, provider, or assistant who is a party or witness in the proceeding.

(B) A person who is a victim of, or at risk of becoming a victim of, conduct prohibited by subdivision (a), (c), or (e) of Section 423.2.

(2) The court in which a criminal or civil proceeding is filed for a violation of subdivision (b), (d), or (f) of Section 423.2 shall take all



action reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of either of the following:

(A) A person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

(B) An entity that owns or operates a place of religious worship.

(b) Restraining orders issued pursuant to paragraph (1) of subdivision (a) may include provisions prohibiting or restricting the photographing of persons described in subparagraphs (A) and (B) of paragraph (1) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons. Restraining orders issued pursuant to paragraph (2) of subdivision (a) may include provisions prohibiting or restricting the photographing of persons described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons.

(c) A court may, in its discretion, permit an individual described in subparagraph (A) or (B) of paragraph (1) of subdivision (a) to use a pseudonym in a civil proceeding described in paragraph (1) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons. A court may, in its discretion, permit an individual described in subparagraph (A) or (B) of paragraph (2) of subdivision (a) to use a pseudonym in a civil proceeding described in paragraph (2) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons.

423.6. This title shall not be construed for any of the following purposes:

(a) To impair any constitutionally protected activity, or any activity protected by the laws of California or of the United States of America.

(b) To provide exclusive civil or criminal remedies or to preempt or to preclude any county, city, or city and county from passing any law to provide a remedy for the commission of any of the acts prohibited by this title or to make any of those acts a crime.

(c) To interfere with the enforcement of any federal, state, or local laws regulating the performance of abortions or the provision of other reproductive health services.

(d) To negate, supercede, or otherwise interfere with the operation of any provision of Chapter 10 (commencing with Section 1138) of Part 3 of Division 2 of the Labor Code.

(e) To create additional civil or criminal remedies or to limit any existing civil or criminal remedies to redress an activity that interferes with the exercise of any other rights protected by the First Amendment to the United States Constitution or of Article I of the California Constitution.



(f) To preclude prosecution under both this title and any other provision of law, except as provided in subdivision (g) of Section 423.3.

SEC. 3. Title 5.7 (commencing with Section 13775) is added to Part 4 of the Penal Code, to read:

TITLE 5.7. REPRODUCTIVE RIGHTS LAW ENFORCEMENT
ACT

13775. This title shall be known and may be cited as the Reproductive Rights Law Enforcement Act.

13776. The following definitions apply for the purposes of this title:

(a) “Anti-reproductive-rights crime” means a crime committed partly or wholly because the victim is a reproductive health services client, provider, or assistant, or a crime that is partly or wholly intended to intimidate the victim, any other person or entity, or any class of persons or entities from becoming or remaining a reproductive health services client, provider, or assistant. “Anti-reproductive-rights crime” includes, but is not limited to, a violation of subdivision (a) or (c) of Section 423.2.

(b) “Subject matter experts” includes, but is not limited to, law enforcement agencies experienced with anti-reproductive-rights crimes, and organizations such as the American Civil Liberties Union, the American College of Obstetricians and Gynecologists, the California Abortion and Reproductive Rights Action League, the California Medical Association, the Feminist Majority Foundation, the National Abortion Federation, the National Organization for Women, and the Planned Parenthood Federation of America that represent reproductive health services clients, providers, and assistants.

(c) “Crime of violence,” “nonviolent,” “reproductive health services;” “reproductive health services client, provider, or assistant;” and “reproductive health services facility” each has the same meaning as set forth in Section 423.1.

13777. (a) Except as provided in subdivision (d), the Attorney General shall do each of the following:

(1) Collect and analyze information relating to anti-reproductive-rights crimes, including, but not limited to, the threatened commission of these crimes and persons suspected of committing these crimes or making these threats. The analysis shall distinguish between crimes of violence, including, but not limited to, violations of subdivisions (a) and (e) of Section 423.2, and nonviolent crimes, including, but not limited to, violations of subdivision (c) of Section 423.2. The Attorney General shall make this information

available to federal, state, and local law enforcement agencies and prosecutors in California.

(2) Direct local law enforcement agencies to report to the Department of Justice, in a manner that the Attorney General prescribes, any information that may be required relative to anti-reproductive-rights crimes. The report of each crime that violates Section 423.2 shall note the subdivision that prohibits the crime. The report of each crime that violates any other law shall note the code, section, and subdivision that prohibits the crime. The report of any crime that violates both Section 423.2 and any other law shall note both the subdivision of Section 423.2 and the other code, section, and subdivision that prohibits the crime.

(3) On or before July 1, 2003, and every July 1 thereafter, submit a report to the Legislature analyzing the information it obtains pursuant to this section.

(4) (A) Develop a plan to prevent, apprehend, prosecute, and report anti-reproductive-rights crimes, and to carry out the legislative intent expressed in subdivisions (c), (d), (e), and (f) of Section 1 of the act that enacts this title in the 2001-2002 session of the Legislature.

(B) Make a report on the plan to the Legislature by December 1, 2002. The report shall include recommendations for any legislation necessary to carry out the plan.

(5) Make a report to the Legislature in 2005, that evaluates the implementation of the act that enacts this title in the 2001-02 Regular Session, any legislation recommended pursuant to subparagraph (B) of paragraph (4), and the plan developed pursuant to subparagraph (A) of paragraph (4). The report shall also include a recommendation concerning whether the Legislature should extend or repeal the sunset date in Section 13779 and recommendations regarding any other necessary legislation.

(b) In carrying out his or her responsibilities under this section, the Attorney General shall consult the Governor, the Commission on Peace Officer Standards and Training, and other subject matter experts.

(c) To avoid production and distribution costs, the Attorney General may submit the reports that this section requires electronically or as part of any other reports that he or she submits to the Legislature, and shall post the reports that this section requires on the Department of Justice Web site.

(d) The Attorney General shall implement this section to the extent the Legislature appropriates funds in the Budget Act or another statute for this purpose.

13778. (a) The Commission on Peace Officer Standards and Training, utilizing available resources, shall develop a two-hour telecourse on anti-reproductive-rights crimes and make the telecourse



available to all California law enforcement agencies as soon as practicable after chaptering of the act that enacts this title in the 2001–2002 session of the Legislature.

(b) Persons and organizations, including, but not limited to, subject-matter experts, may make application to the commission, as outlined in Article 3 (commencing with Section 1051) of Division 2 of Title 11 of the California Code of Regulations, for certification of a course designed to train law enforcement officers to carry out the legislative intent expressed in paragraph (1) of subdivision (d) of Section 1 of the act that enacts this title in the 2001–02 Regular Session.

(c) In developing the telecourse required by subdivision (a), and in considering any applications pursuant to subdivision (b), the commission, utilizing available resources, shall consult the Attorney General and other subject matter experts, except where a subject matter expert has submitted, or has an interest in, an application pursuant to subdivision (b).

13779. This title shall remain in effect until January 1, 2007, and as of that date is repealed unless a later enacted statute deletes or extends that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

